

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

UNITED STATES OF AMERICA,

v.

CHARLES ALSTON, M.D., *et al.*,

Defendants.

INDICTMENT NO.

1:19-CR-10041-JDB

MOTION TO INTRODUCE SUMMARY EXHIBITS

COMES NOW, Defendant Charles Alston (“Defendant”), by and through undersigned counsel, and respectfully requests this Court to allow Defendant to introduce summary exhibits pursuant to Federal Rule of Evidence (FRE) 1006. Defendant shows this Court the following:

Background

The 11/18/19 Superseding Indictment charges Defendant and co-defendant Petway with one count of Conspiracy to Distribute and Dispense Controlled Substances (21 U.S.C. § 846) and five counts of Unlawfully Distributing and Dispensing Controlled Substances and Aiding and Abetting (21 U.S.C. § 841(a)(1)(C), (b)(1)(C); 18 U.S.C. § 2). There will be Government experts and Defense experts that will testify about patient files.

There are 78 patient files that were reviewed by the experts. These patient files have a large amount of information that needs to be broken down easily for a

jury to understand and decipher. Defendant intends on introducing three summary exhibits that were created by defense expert Dr. Martin.

Discussion

A party may use a summary chart or exhibit to prove the content of voluminous writings that cannot be conveniently examined in court. Fed. R. Evid. 1006. “That is, the documents [voluminous writings] must be sufficiently numerous as to make comprehension difficult and . . . inconvenient.” *United States v. Bray*, 139 F.3d 1104, 1109 (6th Cir. 1998). The admission of summary charts is a matter within the discretion of the district court. *United States v. Moses*, 337 Fed. Appx. 443, 447 (6th Cir. 2009) (holding it was not abuse of discretion to admit a summary chart when the chart was not argumentative and fully comported with FRE 1006).

The Sixth Circuit has traditionally endorsed summary evidence. *United States v. DeBoer*, 966 F.2d 1066, 1070 (6th Cir. 1992). Rule 1006 authorizes the admission of the summary exhibit into evidence, and it is generally inappropriate to give a limiting instruction for a Rule 1006 summary. *Bray*, 139 F.3d at 1111; *see Gomez v. Great Lakes Steel Div., Nat. Steel Corp.*, 803 F.2d 250 (6th Cir. 1986) (explaining the admissibility of Rule 1006 summaries versus Rule 611 pedagogical devices). Furthermore, FRE 1006 is an exception to the hearsay rule. *Id.* at 1069.

Here, there are 78 patients that average about 110 pages per patient file. Not allowing a summary of these patient files would require the jury to read thousands

of pages during deliberation. In *United States v. Campbell*, the Sixth Circuit held that summary charts were admissible when there were 36 patient files that contained approximately 30 pages of information per patient file. 845 F.2d 1374, 1381 (6th Cir. 1988). The *Campbell* Court held that without the chart, the jury would have been forced to review hundreds of pages of information. *Id.* If the Sixth Circuit found that 36 patients with about 30 pages per patient file was enough to allow a summary chart, then surely our case of 78 patients with about 110 pages per patient file would allow the admission of a summary exhibit.

Defendant would like to introduce three exhibits: (1) a summary chart with dates, the reason for the visit, and the prescription; (2) controlled substance monitoring data for co-defendant Petway's patients; and (3) a numerical document summarizing the controlled substance data.

Wherefore, Defendant respectfully requests this Court to allow Defendant to introduce summary exhibits pursuant to FRE 1006.

Respectfully submitted this 31st day of December 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing ***MOTION TO INTRODUCE SUMMARY EXHIBITS*** upon all parties involved via the federal e-filing system.

This 31st day of December 2019.

/s/ Manubir S. Arora

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CERTIFICATE OF CONSULTATION

I hereby certify that on this day (12/31/19), opposing counsel was contacted via electronic mail and informed of Defendant's intention of filing the within and foregoing MOTION TO INTRODUCE SUMMARY EXHIBITS, and on this day (12/31/19), counsel for the Government has not notified Defendant of its stance on the motion at hand. Notwithstanding, the Government has objected to all other motions by Defendant.

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